

110TH CONGRESS  
2D SESSION

# S. 2691

To amend the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 to provide enhanced agricultural input into Federal rulemakings, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4, 2008

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 to provide enhanced agricultural input into Federal rulemakings, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Farmer Red Tape Re-

5       duction Act of 2008”.

1 **SEC. 2. AGRICULTURAL REGULATORY FLEXIBILITY.**

2 The Federal Crop Insurance Reform and Department  
3 of Agriculture Reorganization Act of 1994 (7 U.S.C. 6901  
4 et seq.) is amended by adding at the end the following:

5 **“TITLE IV—AGRICULTURAL**  
6 **REGULATORY FLEXIBILITY**

7 **“SEC. 401. DEFINITIONS.**

8 “In this title:

9 “(1) AGENCY.—The term ‘agency’ has the  
10 meaning given the term in section 551 of title 5,  
11 United States Code.

12 “(2) AGRICULTURAL ENTITY.—The term ‘agri-  
13 cultural entity’ means any person or entity that has  
14 income derived from—

15 “(A) farming, ranching, or forestry oper-  
16 ations;

17 “(B) the production of crops, livestock, or  
18 unfinished raw forestry products;

19 “(C) the sale (including the sale of ease-  
20 ments and development rights) of farm, ranch,  
21 or forest products, including water or hunting  
22 rights;

23 “(D) the sale of equipment to conduct  
24 farming, ranching, or forestry operations;

1           “(E) the rental or lease of land used for  
2           farming, ranching, or forestry operations, in-  
3           cluding water or hunting rights;

4           “(F) the provision of production inputs or  
5           services to farmers, ranchers, or foresters;

6           “(G) the processing (including packing),  
7           storing (including shedding), or transporting of  
8           farm, ranch, or forestry products; or

9           “(H) the sale of land used for agriculture.

10          “(3) CHIEF COUNSEL FOR ADVOCACY.—The  
11          term ‘Chief Counsel for Advocacy’ means the Chief  
12          Counsel for Advocacy of the Office of Advocacy of  
13          the Department of Agriculture appointed under sec-  
14          tion 413(b).

15          “(4) COLLECTION OF INFORMATION.—

16          “(A) IN GENERAL.—The term ‘collection  
17          of information’ means obtaining, causing to be  
18          obtained, soliciting, or requiring the disclosure  
19          to third parties or the public, of facts or opin-  
20          ions by or for an agency, regardless of form or  
21          format, calling for—

22                 “(i) answers to identical questions  
23                 posed to, or identical reporting or record-  
24                 keeping requirements imposed on, 10 or  
25                 more persons, other than agencies, instru-

1                   mentalities, or employees of the United  
2                   States; or

3                   “(ii) answers to questions posed to  
4                   agencies, instrumentalities, or employees of  
5                   the United States that are to be used for  
6                   general statistical purposes.

7                   “(B) EXCLUSION.—The term ‘collection of  
8                   information’ does not include collection of infor-  
9                   mation described in section 3518(c)(1) of title  
10                  44, United States Code.

11                  “(5) RECORDKEEPING REQUIREMENT.—The  
12                  term ‘recordkeeping requirement’ means a require-  
13                  ment imposed by an agency on persons to maintain  
14                  specified records.

15                  “(6) RULE.—

16                         “(A) IN GENERAL.—The term ‘rule’ means  
17                         any rule for which an agency publishes a gen-  
18                         eral notice of proposed rulemaking pursuant to  
19                         section 553(b) of title 5, United States Code, or  
20                         any other law.

21                         “(B) INCLUSION.—The term ‘rule’ includes  
22                         any rule of general applicability governing Fed-  
23                         eral grants to State and local governments for  
24                         which an agency provides an opportunity for  
25                         notice and public comment.

1           “(C) EXCLUSIONS.—The term ‘rule’ does  
2           not include a rule of particular applicability re-  
3           lating to—

4                   “(i) rates, wages, corporate or finan-  
5                   cial structures or reorganizations of the  
6                   structures, prices, facilities, appliances,  
7                   services, or allowances; or

8                   “(ii) valuations, costs, accounting, or  
9                   practices relating to those rates, wages,  
10                  structures, prices, facilities, appliances,  
11                  services, or allowances.

12 **“SEC. 402. AGRICULTURAL REGULATORY FLEXIBILITY**  
13 **AGENDA.**

14           “(a) IN GENERAL.—During the months of October  
15           and April of each year, each agency shall publish in the  
16           Federal Register an agricultural regulatory flexibility  
17           agenda that shall contain—

18                   “(1) a brief description of the subject area of  
19                   any rule that the agency expects to propose or pro-  
20                   mulgate that is likely to have a significant economic  
21                   impact on a substantial number of agricultural enti-  
22                   ties;

23                   “(2) a summary of—

1           “(A) the nature of the rule under consider-  
2           ation for each subject area listed in the agenda  
3           under paragraph (1);

4           “(B) the objectives and legal basis for the  
5           issuance of the rule; and

6           “(C) an approximate schedule for com-  
7           pleting action on any rule for which the agency  
8           has issued a general notice of proposed rule-  
9           making; and

10          “(3) the name and telephone number of an  
11          agency official who is knowledgeable concerning the  
12          rule described in paragraph (1).

13          “(b) NOTICE AND COMMENT BY CHIEF COUNSEL  
14          FOR ADVOCACY.—Each agency shall transmit the agricul-  
15          tural regulatory flexibility agenda of the agency to the  
16          Chief Counsel for Advocacy for any comment.

17          “(c) NOTICE AND COMMENT BY AGRICULTURAL EN-  
18          TITIES.—Each agency shall, to the maximum extent prac-  
19          ticable—

20                 “(1) provide notice of each agricultural regu-  
21          latory flexibility agenda to agricultural entities or  
22          the representatives of agricultural entities through  
23          direct notification or publication of the agenda in  
24          publications likely to be obtained by the agricultural  
25          entities; and

1           “(2) invite comments on each subject area on  
2           the agenda.

3           “(d) ADMINISTRATION.—Nothing in this section—

4           “(1) precludes an agency from considering or  
5           acting on any matter not included in an agricultural  
6           regulatory flexibility agenda; or

7           “(2) requires an agency to consider or act on  
8           any matter listed in the agenda.

9   **“SEC. 403. INITIAL AGRICULTURAL REGULATORY FLEXI-**  
10                           **BILITY ANALYSIS.**

11           “(a) IN GENERAL.—If an agency is required by sec-  
12           tion 553 of title 5, United States Code, or any other law,  
13           to publish general notice of proposed rulemaking for any  
14           proposed rule, or publishes a notice of proposed rule-  
15           making for an interpretative rule involving the internal  
16           revenue laws of the United States, the agency shall pre-  
17           pare and make available for public comment an initial ag-  
18           ricultural regulatory flexibility analysis of the proposed  
19           rule that describes the impact of the proposed rule on agri-  
20           cultural entities.

21           “(b) PUBLICATION.—The agency shall publish the  
22           initial agricultural regulatory flexibility analysis or a sum-  
23           mary of the analysis in the Federal Register at the time  
24           of the publication of general notice of proposed rulemaking  
25           for the rule.

1       “(c) NOTICE AND COMMENT BY CHIEF COUNSEL  
 2 FOR ADVOCACY.—The agency shall transmit a copy of the  
 3 initial agricultural regulatory flexibility analysis to the  
 4 Chief Counsel for Advocacy for any comment.

5       “(d) INTERPRETATIVE RULES.—In the case of an in-  
 6 terpretative rule that involves the internal revenue laws  
 7 of the United States, this title applies to interpretative  
 8 rules published in the Federal Register for codification in  
 9 the Code of Federal Regulations only to the extent that  
 10 the interpretative rule impose on agricultural entities a  
 11 collection of information requirement.

12       “(e) CONTENTS.—Each initial agricultural regulatory  
 13 flexibility analysis of an agency for a proposed rule re-  
 14 quired under this section shall contain—

15               “(1) a description of the reasons why action by  
 16 the agency is being considered;

17               “(2) a succinct statement of the objectives of,  
 18 and legal basis for, the proposed rule;

19               “(3) a description of and, if feasible, an esti-  
 20 mate of the number of agricultural entities to which  
 21 the proposed rule will apply;

22               “(4) a description of the projected reporting,  
 23 recordkeeping, and other compliance requirements of  
 24 the proposed rule, including an estimate of the class-  
 25 es of agricultural entities that will be subject to the



1 requirement and the type of professional skills nec-  
 2 essary for preparation of the report or record; and

3 “(5) an identification, to the maximum extent  
 4 practicable, of all relevant Federal rules that may  
 5 duplicate, overlap, or conflict with the proposed rule.

6 “(f) ALTERNATIVES.—

7 “(1) IN GENERAL.—Each initial agricultural  
 8 regulatory flexibility analysis of an agency for a pro-  
 9 posed rule shall contain a description of any signifi-  
 10 cant alternatives to the proposed rule that—

11 “(A) accomplish the purposes of the appli-  
 12 cable law; and

13 “(B) minimize any significant economic  
 14 impact of the proposed rule on agricultural en-  
 15 tities.

16 “(2) TYPES OF ALTERNATIVES.—Consistent  
 17 with the purposes of the applicable law, the analysis  
 18 shall discuss significant alternatives such as—

19 “(A) the establishment of differing compli-  
 20 ance or reporting requirements or timetables  
 21 that take into account the resources available to  
 22 agricultural entities;

23 “(B) the clarification, consolidation, or  
 24 simplification of compliance and reporting re-

1           quirements under the rule for agricultural enti-  
2           ties;

3           “(C) the use of performance rather than  
4           design standards; and

5           “(D) an exemption from coverage of the  
6           rule, or any part of the rule, for agricultural en-  
7           tities.

8   **“SEC. 404. FINAL AGRICULTURAL REGULATORY FLEXI-**  
9                           **BILITY ANALYSIS.**

10       “(a) IN GENERAL.—If an agency promulgates a final  
11 rule under section 553 of title 5, United States Code, after  
12 being required by that section or any other law to publish  
13 a general notice of proposed rulemaking, or promulgates  
14 a final interpretative rule involving the internal revenue  
15 laws of the United States as described in section 403(a),  
16 the agency shall prepare a final agricultural regulatory  
17 flexibility analysis of the final rule that describes the im-  
18 pact of the final rule on agricultural entities.

19       “(b) CONTENTS.—Each final agricultural regulatory  
20 flexibility analysis of an agency for a final rule required  
21 under this section shall contain—

22           “(1) a succinct statement of the need for, and  
23           objectives of, the rule;

1           “(2)(A) a summary of the significant issues  
2           raised by the public comments in response to the ini-  
3           tial agricultural regulatory flexibility analysis;

4           “(B) a summary of the assessment of the agen-  
5           cy of the issues; and

6           “(C) a statement of any changes made in the  
7           proposed rule as a result of the comments;

8           “(3) a description of and an estimate of the  
9           number of agricultural entities to which the rule will  
10          apply or an explanation of why no such estimate is  
11          available;

12          “(4) a description of the projected reporting,  
13          recordkeeping, and other compliance requirements of  
14          the rule, including an estimate of the classes of agri-  
15          cultural entities that will be subject to the require-  
16          ments and the type of professional skills necessary  
17          for preparation of the report or record; and

18          “(5) a description of the steps the agency has  
19          taken to minimize the significant economic impact  
20          on agricultural entities consistent with the purposes  
21          of applicable law, including a statement of—

22                 “(A) the factual, policy, and legal reasons  
23                 for selecting the alternative adopted in the final  
24                 rule; and

1           “(B) why each 1 of the other significant  
 2           alternatives to the rule considered by the agen-  
 3           cy that affect the impact on agricultural entities  
 4           was rejected.

5           “(c) PUBLIC AVAILABILITY.—The agency shall—

6           “(1) make copies of the final agricultural regu-  
 7           latory flexibility analysis available to members of the  
 8           public; and

9           “(2) publish in the Federal Register the anal-  
 10          ysis or a summary of the analysis.

11   **“SEC. 405. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY**  
 12           **ANALYSIS.**

13          “(a) OTHER AGENDA OR ANALYSIS.—An agency may  
 14          perform the analyses required by section 402, 403, or 404  
 15          in conjunction with or as a part of any other agenda or  
 16          analysis required by any other law if the other analysis  
 17          meets the requirements of that section.

18          “(b) NO SIGNIFICANT ECONOMIC IMPACT ON AGRI-  
 19          CULTURAL ENTITIES.—

20          “(1) IN GENERAL.—Sections 403 and 404 shall  
 21          not apply to a proposed or final rule of an agency  
 22          if the head of the agency certifies that the rule will  
 23          not, if promulgated, have a significant economic im-  
 24          pact on a substantial number of agricultural entities.

1           “(2) PUBLICATION OF CERTIFICATION.—If the  
2           head of the agency makes a certification under sub-  
3           section (a), at the time of publication of general no-  
4           tice of proposed rulemaking for the rule or at the  
5           time of publication of the final rule, the agency shall  
6           publish in the Federal Register the certification and  
7           a statement providing the factual basis for the cer-  
8           tification.

9           “(3) NOTICE AND COMMENT BY CHIEF COUN-  
10          SEL FOR ADVOCACY.—The agency shall provide the  
11          certification and statement to the Chief Counsel for  
12          Advocacy for comment.

13          “(c) CLOSELY RELATED RULES.—In order to avoid  
14          duplicative action, an agency may consider a series of  
15          closely related rules as 1 rule for the purposes of sections  
16          402, 403, 404, and 410.

17          **“SEC. 406. EFFECT ON OTHER LAW.**

18          “The requirements of sections 403 and 404 do not  
19          alter any standards otherwise applicable by law to agency  
20          action.

21          **“SEC. 407. PREPARATION OF ANALYSES.**

22          “In complying with sections 403 and 404, an agency  
23          may provide—

1           “(1) a quantifiable or numerical description of  
2           the effects of a proposed rule or alternatives to the  
3           proposed rule; or

4           “(2) more general descriptive statements, if  
5           quantification is not practicable or reliable.

6   **“SEC. 408. WAIVER OR DELAY OF COMPLETION.**

7           “(a) INITIAL AGRICULTURAL REGULATORY FLEXI-  
8   BILITY ANALYSIS.—An agency head may waive or delay  
9   the completion of all or part of the requirements of section  
10  403 for a proposed rule by publishing in the Federal Reg-  
11  ister, not later than the date of publication of the proposed  
12  rule, a written finding, with a statements of the reasons  
13  for the finding, that the final rule is being promulgated  
14  in response to an emergency that makes compliance or  
15  timely compliance with section 403 impracticable.

16          “(b) FINAL AGRICULTURAL REGULATORY FLEXI-  
17  BILITY ANALYSIS.—

18           “(1) IN GENERAL.—Except as provided in sec-  
19   tion 405(b), an agency head may not waive the re-  
20   quirements of section 404 for a final rule.

21           “(2) DELAYED COMPLETION.—An agency head  
22   may delay the date for complying with section 404  
23   for a final rule for a period of not more than 180  
24   days after the date of publication in the Federal  
25   Register of the final rule by publishing in the Fed-

1       eral Register, not later than the date of publication  
 2       of the final rule, a written finding, with a statement  
 3       of the reasons for the finding, that the final rule is  
 4       being promulgated in response to an emergency that  
 5       makes timely compliance with section 104 impracti-  
 6       cable.

7               “(3) EFFECT OF NONCOMPLIANCE.—If the  
 8       agency has not prepared a final agricultural regu-  
 9       latory analysis for a final rule pursuant to section  
 10      404 within 180 days after the date of publication of  
 11      the final rule—

12               “(A) the rule shall lapse and have no ef-  
 13      fect; and

14               “(B) the rule shall not be repromulgated  
 15      until a final regulatory flexibility analysis has  
 16      been completed by the agency.

17   **“SEC. 409. COMMENTS.**

18       “(a) DEFINITION OF COVERED AGENCY.—In this  
 19      section, the term ‘covered agency’ means—

20               “(1) the Environmental Protection Agency; and

21               “(2) the Department of the Interior.

22       “(b) IN GENERAL.—If a rule is promulgated that will  
 23      have a significant economic impact on a substantial num-  
 24      ber of agricultural entities, the head of the agency promul-  
 25      gating the rule or the official of the agency with statutory

1 responsibility for the promulgation of the rule shall ensure  
 2 that agricultural entities are given an opportunity to par-  
 3 ticipate in the rulemaking for the rule through the use  
 4 of techniques such as—

5           “(1) the inclusion in an advanced notice of pro-  
 6 posed rulemaking, if issued, of a statement that the  
 7 proposed rule may have a significant economic effect  
 8 on a substantial number of agricultural entities;

9           “(2) the publication of general notice of pro-  
 10 posed rulemaking in publications likely to be ob-  
 11 tained by agricultural entities;

12           “(3) the direct notification of interested agricul-  
 13 tural entities;

14           “(4) the conduct of open conferences or public  
 15 hearings concerning the rule for agricultural entities,  
 16 including soliciting and receiving comments over  
 17 computer networks; and

18           “(5) the adoption or modification of agency  
 19 procedural rules to reduce the cost or complexity of  
 20 participation in the rulemaking by agricultural enti-  
 21 ties.

22           “(c) REQUIREMENTS FOR COVERED AGENCIES.—  
 23 Prior to publication of an initial agricultural regulatory  
 24 flexibility analysis for a proposed rule that a covered agen-  
 25 cy is required to conduct under this title—



1 “(1) the covered agency shall—

2 “(A) notify the Chief Counsel for Advocacy  
3 of the proposed rule; and

4 “(B) provide the Chief Counsel for Advoca-  
5 cacy with information on the potential impact  
6 of the proposed rule on agricultural entities;

7 “(2) not later than 15 days after the date of re-  
8 ceipt of the materials described in paragraph (1),  
9 the Chief Counsel for Advocacy shall identify indi-  
10 viduals representative of affected agricultural enti-  
11 ties for the purpose of obtaining advice and rec-  
12 ommendations from those individuals on the poten-  
13 tial impact of the proposed rule;

14 “(3) the covered agency shall convene a review  
15 panel for the proposed rule consisting of—

16 “(A) full-time Federal employees of the of-  
17 fice within the covered agency responsible for  
18 carrying out the proposed rule;

19 “(B) the Office of Information and Regu-  
20 latory Affairs of the Office of Management and  
21 Budget; and

22 “(C) the Chief Counsel for Advocacy;

23 “(4) the panel convened under paragraph (3)  
24 for the proposed rule of a covered agency shall—

1           “(A) review any material the covered agen-  
 2           cy has prepared in connection with the proposed  
 3           rule, including any draft proposed rule;

4           “(B) collect advice and recommendations  
 5           of each individual agricultural entity represent-  
 6           ative identified by the covered agency, after  
 7           consultation with the Chief Counsel for Advo-  
 8           cacy, on issues related to paragraphs (3), (4),  
 9           and (5) of subsection (b), and subsection (c), of  
 10          section 403(e); and

11          “(C) not later than 60 days after the date  
 12          the panel is convened, submit to the covered  
 13          agency a report on—

14                 “(i) the comments of the agricultural  
 15                 entity representatives; and

16                 “(ii) the findings of the panel on  
 17                 issues related to paragraphs (3), (4), and  
 18                 (5) of subsection (b), and subsection (c), of  
 19                 section 403(e); and

20          “(5) the covered agency shall—

21                 “(A) make the report provided under para-  
 22                 graph (4)(C) public as part of the rulemaking  
 23                 record; and

24                 “(B) if appropriate, modify—

25                         “(i) the proposed rule;

1 “(ii) the initial agricultural flexibility  
2 analysis; or

3 “(iii) the decision on whether an ini-  
4 tial flexibility analysis is required.

5 “(d) NO SIGNIFICANT ECONOMIC IMPACT ON AGRI-  
6 CULTURAL ENTITIES.—A covered agency may apply sub-  
7 section (c) to rules that the covered agency—

8 “(1) intends to certify under subsection 405(b);  
9 but

10 “(2) believes may have a greater than de mini-  
11 mis impact on a substantial number of agricultural  
12 entities.

13 “(e) WAIVERS.—

14 “(1) IN GENERAL.—The Chief Counsel for Ad-  
15 vocacy, in consultation with the individuals described  
16 in subsection (c)(2) and the Administrator of the Of-  
17 fice of Information and Regulatory Affairs of the Of-  
18 fice of Management and Budget, may waive the re-  
19 quirements of paragraphs (3), (4), and (5) of sub-  
20 section (c) by including in the rulemaking record a  
21 written finding, with a statement of the reasons for  
22 the finding, that those requirements would not ad-  
23 vance the effective participation of agricultural enti-  
24 ties in the rulemaking process.

1           “(2) FACTORS.—In making a determination on  
 2           a proposed rule of a covered agency under this sub-  
 3           section, the Chief Counsel for Advocacy shall con-  
 4           sider—

5                   “(A) in developing the proposed rule, the  
 6                   extent to which the covered agency—

7                           “(i) consulted with individuals rep-  
 8                           resentative of affected agricultural entities  
 9                           with respect to the potential impact of the  
 10                          proposed rule; and

11                          “(ii) took those concerns into consid-  
 12                          eration;

13                          “(B) special circumstances requiring  
 14                          prompt issuance of the rule; and

15                          “(C) whether the requirements of sub-  
 16                          section (c) would provide the individuals de-  
 17                          scribed in subsection (b)(2) with a competitive  
 18                          advantage relative to other agricultural entities.

19 **“SEC. 410. PERIODIC REVIEW OF RULES.**

20           “(a) PLAN FOR PERIODIC REVIEW OF RULES.—

21                   “(1) IN GENERAL.—Not later than 180 days  
 22                   after the date of enactment of this title, each agency  
 23                   shall publish in the Federal Register a plan for the  
 24                   periodic review of the rules issued by the agency that

1       have or will have a significant economic impact on  
2       a substantial number of agricultural entities.

3               “(2) AMENDMENTS.—The agency may amend  
4       the plan by publishing the amendment in the Fed-  
5       eral Register.

6               “(3) PURPOSE OF REVIEW.—The purpose of  
7       the review shall be to determine whether the rules  
8       should be continued without change, or should be  
9       amended or rescinded, consistent with the purposes  
10      of applicable law, to minimize any significant eco-  
11      nomic impact of the rules on a substantial number  
12      of agricultural entities.

13              “(4) TIMETABLE.—Subject to paragraph (5),  
14      the plan shall provide for—

15                   “(A) the review of all such agency rules ex-  
16                   isting on the date of enactment of this title not  
17                   later than 10 years after that date of enact-  
18                   ment; and

19                   “(B) the review of each rule adopted after  
20                   the date of enactment of this title not later  
21                   than 10 years after the date of the publication  
22                   of the rule as the final rule.

23               “(5) EXTENSION.—If the head of the agency  
24      determines that completion of the review of existing

1 rules is not feasible by the date required under para-  
2 graph (4), the head of the agency—

3 “(A) shall certify the determination in a  
4 statement published in the Federal Register;  
5 and

6 “(B) may extend the completion date by 1  
7 year at a time for a total of not more than 5  
8 years.

9 “(b) FACTORS FOR MINIMIZING IMPACT.—In review-  
10 ing rules to minimize any significant economic impact of  
11 a rule on a substantial number of agricultural entities in  
12 a manner consistent with the purposes of applicable law,  
13 the agency shall consider—

14 “(1) the continued need for the rule;

15 “(2) the nature of complaints or comments re-  
16 ceived concerning the rule from the public;

17 “(3) the complexity of the rule;

18 “(4) the extent to which the rule overlaps, du-  
19 plicates, or conflicts with other Federal rules, and,  
20 to the maximum extent feasible, with State and local  
21 governmental rules; and

22 “(5) the length of time since the rule has been  
23 evaluated or the degree to which technology, eco-  
24 nomic conditions, or other factors have changed in  
25 the area affected by the rule.

1 “(c) PUBLICATION OF LIST OF RULES.—

2 “(1) IN GENERAL.—Each year, each agency  
3 shall publish in the Federal Register a list of the  
4 rules that have a significant economic impact on a  
5 substantial number of agricultural entities, which  
6 are to be reviewed pursuant to this section during  
7 the succeeding 1-year period.

8 “(2) CONTENT.—The list shall include a brief  
9 description of each rule and the need for and legal  
10 basis of the rule.

11 “(3) PUBLIC COMMENTS.—The agency shall in-  
12 vite public comment on the rule.

13 **“SEC. 411. JUDICIAL REVIEW.**

14 “(a) IN GENERAL.—In the case of any rule subject  
15 to this title, an agricultural entity that is adversely af-  
16 fected or aggrieved by final agency action may seek judi-  
17 cial review, of agency compliance with—

18 “(1) sections 404, 405(b), 408(b), and 410, in  
19 accordance with chapter 7 of title 5, United States  
20 Code; and

21 “(2) sections 407 and 409(a), in connection  
22 with judicial review of section 404.

23 “(b) JURISDICTION.—Each court having jurisdiction  
24 to review a rule for compliance with section 553, United  
25 States Code, or under any other provision of law, shall

1 have jurisdiction to review any claim of noncompliance  
 2 with—

3 “(1) section 404, 405(b), 108(b), and 110 in  
 4 accordance with chapter 7 of title 5, United States  
 5 Code; and

6 “(2) sections 407 and 409(a), in connection  
 7 with judicial review of section 404.

8 “(c) TIMING.—

9 “(1) IN GENERAL.—Except as otherwise pro-  
 10 vided in this subsection, an agricultural entity may  
 11 seek review under this section during—

12 “(A) the 1-year period beginning on the  
 13 date of final agency action; or

14 “(B) if a provision of law requires that an  
 15 action challenging a final agency action be com-  
 16 menced before the expiration of that 1-year,  
 17 during the period established under the provi-  
 18 sion of law.

19 “(2) FINAL AGRICULTURAL REGULATORY  
 20 FLEXIBILITY ANALYSIS.—If an agency delays the  
 21 issuance of a final agricultural flexibility analysis  
 22 pursuant to section 408(b), an action for judicial re-  
 23 view under this section shall be filed not later  
 24 than—



1           “(A) 1 year after the date the analysis is  
2           made available to the public; or

3           “(B) if a provision of law requires that an  
4           action challenging a final agency regulation be  
5           commenced before the expiration of the 1-year  
6           period, the number of days specified in the pro-  
7           vision of law that is after the date the analysis  
8           is made available to the public.

9           “(d) RELIEF.—In granting any relief in an action  
10          under this section, the court shall order the agency to take  
11          corrective action consistent with this title and chapter 7  
12          of title 5, United States Code, including—

13               “(1) remanding the rule to the agency; and

14               “(2) deferring the enforcement of the rule  
15          against agricultural entities unless the court finds  
16          that continued enforcement of the rule is in the pub-  
17          lic interest.

18           “(e) EFFECTIVE DATE OF RULE.—Nothing in this  
19          subsection limits the authority of any court to stay the  
20          effective date of any rule or provision of any rule under  
21          any other provision of law or to grant any other relief in  
22          addition to the relief authorized under this section.

23           “(f) AGRICULTURAL FLEXIBILITY ANALYSIS.—In an  
24          action for the judicial review of a rule, the agricultural  
25          flexibility analysis for the rule (including an analysis pre-

pared or corrected pursuant to subsection (d)) shall constitute part of the entire record of agency action in connection with the review.

“(g) **SOLE MEANS OF REVIEW.**—Compliance or non-compliance by an agency with this title shall be subject to judicial review only in accordance with this section.

“(h) **OTHER IMPACT STATEMENTS.**—Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of the statement or analysis is otherwise permitted by law.

**“SEC. 412. REPORTS AND INTERVENTION RIGHTS.**

“(a) **MONITORING AND REPORTING.**—The Chief Counsel for Advocacy shall—

“(1) monitor agency compliance with this title;  
and

“(2) report at least annually to the President and to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate on agency compliance with this title.

“(b) **INTERVENTION.**—

“(1) **IN GENERAL.**—The Chief Counsel for Advocacy may appear as *amicus curiae* in any action

1 brought in a court of the United States to review a  
2 rule.

3 “(2) VIEWS.—In any action described in para-  
4 graph (1), the Chief Counsel for Advocacy may  
5 present the views of the Chief Counsel for Advocacy  
6 with respect to—

7 “(A) compliance with this title;

8 “(B) the adequacy of the rulemaking  
9 record with respect to agricultural entities; and

10 “(C) the effect of the rule on agricultural  
11 entities.

12 “(3) GRANTING OF APPLICATION.—A court of  
13 the United States shall grant the application of the  
14 Chief Counsel for Advocacy to appear in any action  
15 under this subsection for the purposes described in  
16 paragraph (2).

17 **“SEC. 413. OFFICE OF ADVOCACY OF THE DEPARTMENT OF**  
18 **AGRICULTURE.**

19 “(a) ESTABLISHMENT.—There is established within  
20 the Department of Agriculture an Office of Advocacy of  
21 the Department of Agriculture.

22 “(b) CHIEF COUNSEL FOR ADVOCACY.—The man-  
23 agement of the Office shall be vested in a Chief Counsel  
24 for Advocacy who shall be a private citizen appointed by

1 the President, by and with the advice and consent of the  
2 Senate.

3 “(c) PRIMARY FUNCTIONS.—The primary functions  
4 of the Office of Advocacy shall be—

5 “(1)(A) to measure the direct costs and other  
6 effects of government regulation on agricultural enti-  
7 ties; and

8 “(B) to make legislative and nonlegislative pro-  
9 posals for eliminating excessive or unnecessary regu-  
10 lations of agricultural entities;

11 “(2)(A) to study the ability of financial markets  
12 and institutions to meet agricultural entity credit  
13 needs; and

14 “(B) to determine the impact of government de-  
15 mands for credit on agricultural entities;

16 “(3)(A) to recommend specific measures for  
17 creating an environment in which all agricultural en-  
18 tities will have the opportunity to compete effectively  
19 and expand to the full potential of agricultural enti-  
20 ties; and

21 “(B) to ascertain the common reasons, if any,  
22 for agricultural entity successes and failures; and

23 “(4)(A) to evaluate the efforts of each depart-  
24 ment and agency of the United States, and of pri-  
25 vate industry, to assist agricultural entities owned

1 and controlled by veterans, and agricultural entities  
2 concerns owned and controlled by serviced-disabled  
3 veterans;

4 “(B) to provide statistical information on the  
5 use of the programs by the agricultural entities; and

6 “(C) to make appropriate recommendations to  
7 the Secretary and to Congress in order to promote  
8 the establishment and growth of those agricultural  
9 entities.

10 “(d) ADDITIONAL DUTIES.—The Office of Advocacy  
11 shall—

12 “(1) serve as a focal point for the receipt of  
13 complaints, criticisms, and suggestions concerning  
14 the policies and activities of the President and any  
15 other Federal agency that affects agricultural enti-  
16 ties;

17 “(2) counsel agricultural entities on how to re-  
18 solve questions and problems concerning the rela-  
19 tionship of the agricultural entity to the Federal  
20 Government;

21 “(3) develop proposals for changes in the poli-  
22 cies and activities of any agency of the Federal Gov-  
23 ernment that will better fulfill the purposes of agri-  
24 cultural entities and communicate the proposals to  
25 the appropriate Federal agencies;

1           “(4) represent the views and interests of agri-  
2           cultural entities before other Federal agencies whose  
3           policies and activities may affect agricultural enti-  
4           ties; and

5           “(5) enlist the cooperation and assistance of  
6           public and private agencies, businesses, and other  
7           organizations in disseminating—

8                   “(A) information about the programs and  
9                   services provided by the Federal Government  
10                  that are of benefit to agricultural entities; and

11                  “(B) information on how agricultural enti-  
12                  ties can participate in or make use of the pro-  
13                  grams and services.”.

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